



US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice

Number: 199500412

Date: April 9, 2004

Comments Due: May 9, 2004

In reply, please refer to the Public Notice Number

SUBJECT: The U.S. Army Corps of Engineers, Sacramento District, (Corps) is evaluating a permit application for the River Islands at Lathrop (River Islands) project. This notice is to inform interested parties of the proposed activity and to solicit comments. In particular, the Corps is interested in any information relative to the need to prepare and Environmental Impact Statement for this project. This notice may also be viewed at the Corps web site at <http://www.spk.usace.army.mil/cespk-co/regulatory/PNs/index.html>.

AUTHORITY: This application is being evaluated under Section 10 of the Rivers and Harbors Act of 1899 (RHA) for structures or work in or affecting navigable waters of the United States and/or Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

APPLICANT: Susan Dell'Osso, Califia, LLC (dba River Islands at Lathrop), 16976 S. Harlan Road, Lathrop, California 95330

LOCATION: The proposed River Islands project is located primarily on Stewart Tract in Townships 1 and 2 South, Ranges 5 and 6 East, MDBM, in the City of Lathrop, San Joaquin County, California. Lathrop is in the San Joaquin Valley, at the junction of Interstate 5 (I-5), I-205, and State Route 120 (SR 120), approximately 65 miles east of San Francisco and 55 miles south of Sacramento.

PROJECT DESCRIPTION: The purpose of the project is to construct a residential and light commercial development with associated infrastructure. The Corps has verified approximately 379 acres of waters of the United States (waters), including wetlands, the San Joaquin River and Paradise Cut, within the 5,546-acre area surveyed for the project. The applicant has estimated the project will result in the loss of approximately 31.60 acres of waters, including wetlands, as follows: San Joaquin and Old Rivers-4.29 acres, Paradise Cut-3.98 acres, drainage channel-9.51 acres, other emergent wetlands-10.00 acres, pond and pond forested tidal wetlands-3.82 acres. Based on the available information the project will indirectly impact many of the other waters in the surveyed area. The attached drawings provide additional project details. The applicant states the project will also create approximately 280 acres of open water above what currently exists. The applicant states the overall project purpose is to develop a viable, large-scale, self-sustaining master planned residential and employment-generating community, which lies outside of the 100-year floodplain and is designed such that it does not result in detrimental flood control effects, with a diversity of open space and recreational amenities (including water oriented activities), situated within the South Delta, and that is an affordable alternative to residential and employment opportunities in the Bay Area.

The proposed project site covers approximately 4,905 acres of Stewart Tract and surrounding waterways. The project includes work in the San Joaquin River, Old River, Paradise Cut, an unnamed drainage channel, pond, and adjacent wetlands on Stewart Tract to reconstruct levees and construct residential and commercial development, including recreation facilities, back bays and an interior lake. The project would involve construction of a series of setback levees and back bays, rebuilding and strengthening existing levees, and excavation and expansion of Paradise Cut to increase its storage and flow capacity. The applicant has stated this would remove the River Islands portion of Stewart Tract project site from the 100-year floodplain and

provide a 200-year level of flood protection. The existing levee along Paradise Cut would be replaced with a new setback levee. Levees along Old River and the San Joaquin River would be reconfigured and strengthened by the addition of soil to the landward side of the levees to create high ground corridors along the river edges. This work may occur in phases with strengthening in some areas first and high ground corridors created later. A new cross-levee would subsequently be built immediately west of, and paralleling, the existing UPRR right-of-way. The applicant asserts levee work along the San Joaquin River and Old River afford the opportunity for back bays which would create limited flood control storage, habitat for various Delta fisheries and sites for recreational facilities.

The project involves construction of approximately 11,000 homes and five million square feet of commercial and retail space and a variety of other community facilities and associated infrastructure. The mixed-use development would cover approximately 4,115 acres and include a town center district, and employment center, public service facilities, retail and commercial uses, residential neighborhoods, lakes and water features, schools, parks and trails, golf courses, open space and habitat areas.

The project also includes constructing two bridge crossings of the San Joaquin River and two bridge crossings of Paradise Cut to provide access to and from the developed areas. Bridge crossings on the San Joaquin River consist of the Bradshaws Crossing bridge and the Golden Valley Parkway bridge. Each of these crossings would consist of two parallel bridges, each supporting two lanes of traffic. Each two-lane bridge is expected to have two footings in the river, resulting in eight total footings. Bridge crossings of Paradise Cut include the Golden Valley Parkway bridge and the Paradise Road bridge. The Golden Valley Parkway bridge would consist of two parallel bridges, each supporting two lanes of traffic. The Paradise Road bridge would be a two-lane bridge constructed adjacent to and paralleling the existing two-lane Paradise Road bridge. The existing bridge would not be modified. Bridges over navigable waters would require permits from the U.S. Coast Guard under the authority of Section 9 of the RHA. Various utility lines would be suspended from the San Joaquin River bridges and as such, may be part of the RHA Section 9 authorization for the project. The applicant also proposes to construct smaller bridges to connect Paradise Cut islands, for movement of riparian brush rabbit, as part of an overall mitigation plan for riparian brush rabbit to allow rabbits to move between habitat areas which are surrounded by water.

The development includes construction of water-oriented recreational facilities including boat docks, ramps and piers. The applicant states that these facilities would be constructed to meet existing and future demand for recreational facilities in the Delta. Docks sufficient to provide 921 total berths and two lanes of boat launching ramps. Of the 921 berths, 365 berths would be installed along the shores of the San Joaquin and Old Rivers. The applicant states that all other boat docks (totaling 556 berths), any associated piers, and both launch ramp lanes would be constructed in back bays prior to connecting the back bays to Old River and the San Joaquin River.

Docks in Rivers would be approximately 10 feet wide and 24 feet long, floating docks and would not require any in water installation of pilings or similar features. Gangways would be 20 to 24 feet long. The docks within the rivers would parallel the shoreline, extending into the river no more than 34 feet. Docks within the back bays would have a variety of designs, with some single boat docks, some multi-boat docks, and some docks with similar designs to those in the rivers. Piers may be installed to serve some back bay docks.

The applicant states that construction is expected to begin in spring 2005, and would be phased over 20 years. As development of the proposed project proceeds over the 20-year buildout period, the locations of some land uses within the project site may vary. However, if this occurs, the applicant states that important project elements, such as the number and type of housing units, total acreage of parks, public services capacity, and other factors, would not be significantly changed.

ADDITIONAL INFORMATION: A delineation which identifies approximately 379 acres of waters of the United States, including approximately 41.18 acres of emergent wetlands, 55.23 acres of scrub/shrub wetlands, 60.92 acres of forested wetlands, 2.77 acres of pond, and 218.51 acres of riverine/channel aquatic habitat, within the approximately 5,546-acre area surveyed for the project site, was verified by the Corps on January 30, 2004.

A Subsequent Environmental Impact Report (EIR) for the River Islands at Lathrop Project was certified by the City of Lathrop in January 2003, and is available for review at the City of Lathrop's City Hall. The General Plan Amendment, West Lathrop Specific Plan amendment, rezoning and Urban Design Concept have also been approved by the City of Lathrop.

The project site is currently characterized as agricultural and open space including some relatively undisturbed forested riparian habitat as well as riprapped levees with little or no woody riparian vegetation. The site is in the area known as West Lathrop, which was annexed to the City in 1997. Stewart Tract is an island in the Sacramento-San Joaquin River Delta bounded by the San Joaquin River on the north and east, Old River on the west, and Paradise Cut on the south. Union Pacific Railroad (UPRR) tracks (previously owned by the Southern Pacific Railroad [SPRR]) are located along the eastern boundary of the largest portion of the project site. Paradise Cut is used as a flood control bypass channel carrying flood waters from the San Joaquin River to Old River. The area adjacent to the project site is largely agricultural, with farmsteads and associated outbuildings. The area north of the project is currently being changed to urban uses and grading has commenced on the Mossdale Village development. The existing developed portion of the City of Lathrop is located east of I-5. Agricultural lands and a quarry are located southeast of the I-5/205 merge.

Alternatives. The applicant has not provided specific information concerning project alternatives. The applicant has stated they are in the process of identifying alternatives to comply with Section 404(b) (1) of Clean Water Act (CWA) and the National Environmental Policy Act (NEPA). The applicant will need to provide sufficient information to allow the Corps to determine the least environmentally damaging practicable alternative which meets the project purpose. Potential alternatives include using off-site locations as well as on-site avoidance and minimization alternatives.

Mitigation: The applicant states their mitigation plan was developed to address impacts from various project activities, including excavation of the bench near the Paradise Weir and breaching the existing Paradise Cut levee after the proposed setback levee is complete. The applicant states that open space and habitat preservation and creation are important features of the project. Natural land areas, including Paradise Cut, the riverbanks, and the back bays, would provide a variety of uses, including flood control, recreation, and habitat for sensitive species. Habitat restoration/enhancement would also be conducted in many of the natural land areas. The applicant states the objective of the mitigation is to assure that there would be no net loss of wetland functions and values resulting from development of the project. The applicant is in the process of preparing a mitigation monitoring plan that is consistent with the USACE compensatory mitigation policies as set forth in Regulatory Guidance Letter No. 2-02 and dated December 24, 2002. The applicant states the constructed aquatic features on the project site would be designed to accommodate mitigation required by USACE, the Service, NOAA Fisheries and California Department of Fish and Game. Mitigation would include creation, restoration and/or enhancement and preservation of aquatic features onsite. Mitigation areas would be protected in perpetuity. The applicant anticipates that the restoration and enhancement activities in Paradise Cut and the creation of back bays would be sufficient to mitigate for the project's impacts to waters of the United States.

The applicant's proposed mitigation for the project consists of creation of approximately 140 acres of new waters in the Paradise Cut canal and approximately 85 acres of new waters in the back bays. Within this 225 acres of waters would be approximately 46 acres of emergent wetland and shallow water habitat (less than 10-feet deep) for various fish species. The plan will also include restoration of approximately 10-acres of

wetlands at the Paradise Weir bench, post construction monitoring to insure success of wetland creation/restoration areas, creation of riparian and shaded riverine aquatic habitat on the levee remnants associated with 7 of the 9 back bays and on the levee remnants in Paradise Cut, creation of riparian habitat and landscaping with native species on the levee shorelines along the San Joaquin River, Old River, and Paradise Cut, restoration of riparian habitat on a portion of the existing agricultural lands in Paradise Cut, and allowing a portion of the agricultural lands in Paradise Cut to passively return to natural vegetation.

The applicant has also proposed to participate in the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJCMSCP) and to retain a portion of the agricultural lands in Paradise Cut as a potential riparian/riparian brush rabbit mitigation bank and/or additional credits against the SJCMSCP, and actively or passively returning these areas to riparian vegetation some time in the future, to construct vegetated bridges between various habitat islands in Paradise Cut to allow riparian brush rabbit to move between the islands. They also propose to allow vegetation to grow on the southeast side of the cross levee (adjacent to the UPRR tracks) to provide habitat for riparian brush rabbit between the cross levee and the UPRR tracks.

The applicant proposes to preserve habitat restoration/creation areas in Paradise Cut in perpetuity, with eventual transfer to a suitable land management entity.

The applicant's plan would also include provisions for a biologist to be present during dewatering and fill of the pond. During this process any western pond turtles would be relocated to the nearest suitable aquatic habitat in Paradise Cut. The plan would also include pre-construction surveys for common tree nesting raptors and provide temporary construction set-backs for active nests until young have fledged.

The applicant has stated maintenance dredging of back bays and the Paradise Cut Canal would only occur between August 1 and August 31 to avoid the period when sensitive fish species are more likely to be present and susceptible to disturbance. Suction dredging would be used to minimize sediment releases. As much as feasible, dredging would occur during periods of low tides and low flows. In-water construction activities (e.g., installation of bridge footings) would be avoided and/or minimized during months when sensitive fish species are more susceptible to disturbance. Water pass through culverts would be installed at the upstream side of 7 of the 9 back bays. The downstream surface of the Paradise Weir would be smoothed to minimize the potential for injury to fish that may pass over the weir during flood events.

The applicant also proposes the creation of approximately 280-acres of open water habitat and 35-acres of man-made treatment wetlands in the central lake, although the applicant has stated no mitigation credit is sought for this activity. Water intakes for the Central Lake would be screened and would replace existing unscreened agricultural intakes which would be abandoned as development proceeds and they are no longer needed. To prevent the potential for introduction of undesirable species into the Delta, only species currently existing in the Delta would be used to stock the Central Lake, in coordination with state and federal fish agencies. Pumps to remove water from the Central Lake would not allow the passage of live fish.

OTHER GOVERNMENTAL AUTHORIZATIONS: California State water quality certification is required before a Corps permit may be issued for this work. The applicant has stated they have submitted a request for State water quality certification to the California Regional Water Quality Control Board under Section 401 of the Clean Water Act. The applicant has stated the project would also require Section 402 National Pollution Discharge Elimination System stormwater management compliance, compliance with California Department of Fish and Game Code Section 2080-2081 and Section 1602, a lease agreement with California State Lands Commission, and an encroachment permit from the California State Reclamation Board. Since this project involves work in a component of the federal flood control project, permission from the Secretary of the Army under 33 USC 408 will be required to work on the ring levee. The project will also require bridge permit(s) from U.S. Coast Guard under Section 9 of the Rivers and Harbors Act.

HISTORIC PROPERTIES: Potentially eligible cultural resources may be affected by the proposed project. The Corps would initiate consultation with the State Historic Preservation Officer under Section 106 of the National Preservation Act, as appropriate. An archaeological survey report was prepared on behalf of the applicant by EDAW in April 2002 for the EIR. As identified in the EIR, development of the project would affect one prehistoric archaeological site and two archaeological isolates recorded during the field survey. One of these sites could be eligible for listing on the California Register of Historical Resources (CRHR). A determination for eligibility consistent with §106 of the National Historic Preservation Act has not yet been made. The Corps has made the determination that this prehistoric archaeological site is the only cultural resource within the federal area of potential effect. The applicant is currently conducting further work in accordance with the SEIR and is conducting a full cultural resources assessment consistent with §106 of the National Historic Preservation Act.

ENDANGERED SPECIES: The proposed activity may affect federally-listed endangered or threatened species or their critical habitat. Based on information available, the project may affect the following federally listed species: delta smelt (*Hypomesus transpacificus*); steelhead (*Oncorhynchus mykiss*); spring run chinook salmon (*Oncorhynchus tshawytschs*); winter run chinook salmon (*Oncorhynchus tshawytschs*); giant grater snake (*Thamnophis gigas*); riparian brush rabbit (*Sylvilagus bachmani riparius*); and valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). The fall/late fall run chinook salmon (*Oncorhynchus tshawytschs*) is not listed, but would be included in a conference opinion in case of listing during the life of the project. Additionally, although the Sacramento splittail (*Pogonichthys macrolepidotus*) has been delisted, the applicant is requesting technical assistance from the Service. The applicant believes impacts to the valley elderberry longhorn beetle are addressed through the implementation of the SJCMSCP.

The Corps will initiate consultation with the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service, pursuant to Section 7 of the Endangered Species Act, as appropriate. The applicant has stated they are informally consulting with these agencies.

ESSENTIAL FISH HABITAT: The proposed project may adversely affect Essential Fish Habitat (EFH) as defined in the Magnuson-Stevens Fishery Conservation and Management Act. The Corps will initiate consultation with the National Marine Fisheries Service, pursuant to Magnuson-Stevens Fishery Conservation and Management Act, as appropriate.

The above determinations are based on information provided by the applicant and our preliminary review.

EVALUATION FACTORS: The decision whether to issue a permit would be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision would reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity would be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest would include application of the 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230), or of their criteria.

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received would be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for

this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SUBMITTING COMMENTS: Written comments, referencing Public Notice 199500412, must be submitted to the office listed below on or before May 9, 2004, to:

Michael Finan, Project Manager
U.S. Army Corps of Engineers, Sacramento District
Delta Office
1325 J Street, Room 1480
Sacramento, California 95814-2922

The Corps is particularly interested in receiving comments related to the proposal's probable impacts on the affected aquatic environment and the secondary and cumulative effects. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. If you have questions or need additional information please contact the applicant, Ms. Susan Dell'Oso of River Island at Lathrop, telephone 209-858-2040, Ms. Alicia Guerra, Esq. of Morrison & Foerster, telephone 925-295-3316, Ms. Karen Shaffer of Gibson & Skordal, LLC, telephone 916-569-1830, or the Corps' project manager, Michael Finan, at the letterhead address, telephone 916-557-5324, Michael.C.Finan@usace.army.mil.

Attachments: 22 drawings